IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 885 OF 1998.

1. The Chairman,
   Bombay Port Trust, having his
   office at Vijay Deep, Shoorji
   Vallabhdas Marg, Ballard Estate,
   Mumbai 400 038.

2. The Board of rustees of the
   Port of Mumbai, a body corporate,
   constituted under the provisions
   of the Major Port Trusts Act,
   1963, as amended by the Major
   Port Trusts (Amendment) Act,
   1974, having its principal place
   of business at Vijay Deep,
   Shoorji Vallabhdas Marg, Ballard
   Estate, Mumbai 400 038. ... Plaintiffs.

Versus.

M/s.R.H.Tookaram Harbia & Sons,
a firm carrying on business at
115, Bharat Chambers, Baroda
Street, Masjid, Mumbai. ... Defendant.

Shri U.J.Makhija i/by M/s.Mulla & Mulla, C.B.C. for the Plaintiffs.

None for the Defendant.

CORAM : ABHAY S.OKA, J.

DATED : 20th July, 2007.

ORAL JUDGMENT.:

1. This suit is kept under the caption of "undefended suits for exparte decree". The learned Counsel appearing for the Plaintiff has tendered on record an affidavit of evidence of Shri Ramesh Shivaram Ghadawale, an Administrative Officer of the 2nd Plaintiff. The said affidavit is marked "X" for identification and is taken on record. The compilation

of original documents is marked "Y" (Collectively) for identification and is taken on record. There is no written statement filed by the Defendant.

2. The suit is filed for recovery of various amounts from the Defendant. The Bombay Docks Labour Board was constituted under the Dock Workers (Regulation of Employment) Act, 1948. The Board was constituted for enforcement of various schemes. The schemes were framed for ensuring regularity of employment of employees registered under the schemes. One of such schemes was commonly known as "Stevedoring Scheme". As per the said scheme the employers registered under the Scheme were allowed to indent registered workers of the Bomay Docks Labour Board. As per the Scheme it was obligatory on the part of the registered employees to pay the wages of the workers indented. In the year 1990, due to various reasons, the Bombay Docks Labour Board was in financial difficulty and was unable to pay the workmen on its register who were registered under the Dock Workers (Regulation of Employment) Scheme of 1956. Writ petitions came to be filed in this Court by the affected workmen for claiming wages. After the writ petitions were filed, on 13th December 1991 a memorandum of agreement was arrived at between the 2nd Plaintiff, the Bombay Docks Labour Board, Unions and Bombay Stevedores Association Ltd. A true xerox copy of the said

memorandum has been produced by the Plaintiffs.

3. Subsequently on 25th January 1994, a Memorandum of Settlement was entered into whereunder the workmen on the register of the Bombay Dock Labour Board were absorbed by the 2nd Plaintiff. A copy of the said Memorandum is also placed on record. Subsequently, notifications were issued superseding the Bombay Dock Labour Board. By a notification dated 25th February 1994 the employees covered under the schemes of the Bombay Dock Labour Board were absorbed in the employment of the 2nd Plaintiff. There was a wage revision settlement arrived at on 6th December 1994. On the basis of the said settlement, wage arrears for the period from 1st January 1993 to 31st December 1994 were paid by the Plaintiffs to the eligible employees and workers who were the members of the erstwhile Bombay Dock Labour Board which were in turn to be reimbursed by the registered employers including the Defendants.

4. It is the case of the Plaintiffs that the Defendants were carrying on stevedoring business. As a registered employer member under the Stevedoring Scheme, the Defendants used to indent registered employees of the Bombay Docks Labour Board. The powers and functions of the said Bombay Docks Labour Boad stand vested in the second Plaintiff. The Defendants herein availed of the

services of the registered workers and thus became liable to pay the wages to such workers. Apart from the wages, under the revision settlement, the Defendants were also liable to pay arrears of wages. As the Defendant failed to make payment towards arrears, the amounts were paid by the 2nd Plaintiff.

5. According to the case of the Plaintiffs, a bill in the sum of Rs.47,08,902.30 ps. for the period between 1st January 1993 to 28th February 1994 as per the wage settlement dated 6th December 1994 was raised upon the Defendants. A true copy of the said bill has been produced by the Plaintiffs. A dispute was raised about the said bill by the Bombay Stevedores Association Ltd.

6. It is the case of the Plaintiff that as per the directives received from the Central Government dated 11th September 1995, arrears of D.A. became payable to the registered workers for the period from 1st January 1992 to 31st December 1995 and accordingly the Plaintiffs raised a bill. The bill was raised on the Defendants on 1st August 1997 to pay variance in D.A. amounting to Rs.50,408.77 which was due from the Defendants. A copy of the bill is also placed on record. The particulars of claim as aforesaid are set out in Exhibit I to the plaint.

7. There is no written statement filed by the Defendant. The claim of the Plaintiff has been duly proved by the affidavit in lieu of evidence of Shri Ramesh Shivaram Ghadawale. The documents on which the suit claim is based are also proved by the said witness.

8. The Plaintiffs have prayed for interest at the rate of 18% per annum. There is no contract between the parties as regards payment of interest. Therefore, the interest will have to be fixed at 6% per annum.

9. Hence there will be a decree in terms of prayer clauses (a) and (b) with modification that the interest payable will be at the rate of 6% per annum from the date of suit till payment or realisation.

10. Certified copy expedited.

Judge.